

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
MASSACHUSETTS

VICTOR ROSARIO,

Plaintiff,

v.

Lowell Police Officers HAROLD G.
WATERHOUSE, JOHN GIULFOYLE, GARRETT
SHEEHAN, JOHN R. NEWELL, GEORGE H.
GENTLE, JOSEPH M. McGARRY, LARRY B.
McGLASSON, WILFRED DOW, JOHN R. MYERS,
and UNKNOWN OFFICERS OF THE LOWELL
POLICE DEPARTMENT; WILLIAM M.
GILLIGAN and UNKNOWN MEMBERS OF THE
LOWELL FIRE DEPARTMEN; Massachusetts State
Police Officer DAVID A. COONAN, and
UNKNOWN OFFICERS OF THE
MASSACHUSETTS STATE POLICE; and the CITY
OF LOWELL,

Defendant,

C.A. 19-CV-10532-LTS

DEFENDANT, DAVID A. COONAN'S, ANSWER TO PLAINTIFF'S COMPLAINT

The Defendant, David A. Coonan, answers the Plaintiff's Complaint as follows:

Introduction

The Defendant neither admits nor denies the Plaintiff's first unnumbered paragraph as same is a statement of introduction. To the extent that factual allegations are asserted against him, the Defendant denies same.

1. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
2. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
3. The Defendant is without sufficient personal knowledge to respond to this paragraph of

the Plaintiff's Complaint.

4. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
5. The Defendant denies the allegations contained in Paragraph 5.
6. The Defendant denies the allegations contained in Paragraph 6.
7. The Defendant denies the allegations contained in Paragraph 7.
8. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
9. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
10. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.

Jurisdiction

11. The Defendant neither admits nor denies the Plaintiff's paragraphs as same is a statement of jurisdiction.
12. The Defendant neither admits nor denies the Plaintiff's paragraphs as same is a statement of jurisdiction.
13. The Defendant neither admits nor denies the Plaintiff's paragraphs as same is a statement of jurisdiction.

Parties

14. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
15. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
16. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
17. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.

18. The Defendant admits that he was, at all times relevant hereto, employed by the Massachusetts State Police. The Defendant denies the remaining allegations contained in Paragraph 18.

Facts

19. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
20. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
21. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
22. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
23. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
24. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
25. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
26. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
27. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
28. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
29. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
30. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
31. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
32. The Defendant is without sufficient personal knowledge to respond to this paragraph of

the Plaintiff's Complaint.

33. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
34. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
35. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
36. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
37. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
38. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
39. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
40. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
41. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
42. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
43. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
44. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
45. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
46. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
47. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.

48. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
49. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
50. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
51. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
52. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
53. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
54. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
55. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
56. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
57. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
58. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
59. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
60. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
61. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
62. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.

63. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
64. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
65. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
66. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
67. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
68. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
69. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
70. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
71. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
72. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
73. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
74. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
75. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
76. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
77. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
78. The Defendant is without sufficient personal knowledge to respond to this paragraph of

the Plaintiff's Complaint.

79. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
80. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
81. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
82. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
83. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
84. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
85. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
86. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
87. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
88. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
89. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
90. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
91. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
92. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
93. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.

94. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
95. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
96. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
97. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
98. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
99. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
100. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
101. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
102. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
103. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
104. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
105. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
106. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
107. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
108. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.

109. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
110. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
111. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
112. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
113. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
114. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
115. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
116. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
117. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
118. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
119. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
120. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
121. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
122. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
123. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.
124. The Defendant is without sufficient personal knowledge to respond to this

paragraph of the Plaintiff's Complaint.

125. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.

126. The Defendant is without sufficient personal knowledge to respond to this paragraph of the Plaintiff's Complaint.

COUNT I

42 U.S.C. Section 1983: Due Process

127. The Defendant reasserts his responses to paragraphs 1-126 as if specifically restated herein.

128. The Defendant denies the allegations contained in Paragraph 128.

129. The Defendant denies the allegations contained in Paragraph 129.

130. The Defendant denies the allegations contained in Paragraph 130.

131. The Defendant denies the allegations contained in Paragraph 131.

132. The Defendant denies the allegations contained in Paragraph 132.

133. The Defendant denies the allegations contained in Paragraph 133.

134. The Defendant denies the allegations contained in Paragraph 134.

135. The Defendant denies the allegations contained in Paragraph 135.

136. The Defendant denies the allegations contained in Paragraph 136.

137. The Defendant denies the allegations contained in Paragraph 137.

138. The Defendant denies the allegations contained in Paragraph 138.

139. The Defendant denies the allegations contained in Paragraph 139.

140. The Defendant denies the allegations contained in Paragraph 140.

141. The Defendant denies the allegations contained in Paragraph 141.

142. The Defendant denies the allegations contained in Paragraph 142.

143. The Defendant denies the allegations contained in Paragraph 143.

144. The Defendant denies the allegations contained in Paragraph 144.

145. The Defendant denies the allegations contained in Paragraph 145.

COUNT III

*42 U.S.C. Section 1983: Malicious
Prosecution*

146. The Defendant reasserts his responses to paragraphs 1-145 as if specifically restated herein.

147. This paragraph of the Plaintiffs' Complaint contains legal conclusions to which no response is required. To the extent that facts are alleged, and a response is required, the Defendant denies the allegations.

148. The Defendant denies the allegations contained in Paragraph 148.

149. The Defendant denies the allegations contained in Paragraph 149.

150. The Defendant denies the allegations contained in Paragraph 150.

151. The Defendant denies the allegations contained in Paragraph 151.

152. The Defendant denies the allegations contained in Paragraph 152.

153. The Defendant denies the allegations contained in Paragraph 153.

154. The Defendant denies the allegations contained in Paragraph 154.

155. The Defendant denies the allegations contained in Paragraph 155.

COUNT III

*42 U.S.C. Section 1983: Coerced and False
Confession*

156. The Defendant reasserts his responses to paragraphs 1-155 as if specifically restated herein.

157. This paragraph of the Plaintiffs' Complaint contains legal conclusions to which no response is required. To the extent that facts are alleged, and a response is required, the Defendant denies the allegations.

158. The Defendant denies the allegations contained in Paragraph 158.

159. The Defendant denies the allegations contained in Paragraph 159.

160. The Defendant denies the allegations contained in Paragraph 160.

161. The Defendant denies the allegations contained in Paragraph 161.

COUNT IV

*42 U.S.C. Section 1983: Coerced Confession
Fourteenth Amendment*

162. The Defendant reasserts his responses to paragraphs 1-161 as if specifically restated herein.

163. This paragraph of the Plaintiffs' Complaint contains legal conclusions to which no response is required. To the extent that facts are alleged, and a response is required, the Defendant denies the allegations.

164. The Defendant denies the allegations contained in Paragraph 164.

165. The Defendant denies the allegations contained in Paragraph 165.

166. The Defendant denies the allegations contained in Paragraph 166.

COUNT V

*42 U.S.C. Section 1983: Conspiracy to
Deprive Constitutional Rights*

167. The Defendant reasserts his responses to paragraphs 1-166 as if specifically restated herein.

168. This paragraph of the Plaintiffs' Complaint contains legal conclusions to which no response is required. To the extent that facts are alleged, and a response is required, the Defendant denies the allegations.

169. The Defendant denies the allegations contained in Paragraph 169.

170. The Defendant denies the allegations contained in Paragraph 170.

171. The Defendant denies the allegations contained in Paragraph 171.

172. The Defendant denies the allegations contained in Paragraph 172.

173. The Defendant denies the allegations contained in Paragraph 172.

COUNT VI

42 U.S.C. Section 1983: Failure to Intervene

174. The Defendant reasserts his responses to paragraphs 1-173 as if specifically restated herein.

175. This paragraph of the Plaintiffs' Complaint contains legal conclusions to which no response is required. To the extent that facts are alleged, and a response is required, the Defendant denies the allegations.

176. The Defendant denies the allegations contained in Paragraph 176.

177. The Defendant denies the allegations contained in Paragraph 177.

178. The Defendant denies the allegations contained in Paragraph 178.

179. The Defendant denies the allegations contained in Paragraph 179.

COUNT VII

State-Law Claim – Malicious Prosecution

180. The Defendant reasserts his responses to paragraphs 1-179 as if specifically restated herein.

181. This paragraph of the Plaintiffs' Complaint contains legal conclusions to which no response is required. To the extent that facts are alleged, and a response is required, the Defendant denies the allegations.

182. The Defendant denies the allegations contained in Paragraph 182.

183. The Defendant denies the allegations contained in Paragraph 183.

184. The Defendant denies the allegations contained in Paragraph 184.

185. The Defendant denies the allegations contained in Paragraph 185.

COUNT VIII

State-Law Claim - Negligence

186. The Defendant reasserts his responses to paragraphs 1-185 as if specifically restated herein.

187. This paragraph of the Plaintiffs' Complaint contains legal conclusions to which no response is required. To the extent that facts are alleged, and a response is required, the Defendant denies the allegations.

188. The Defendant denies the allegations contained in Paragraph 188.

189. The Defendant denies the allegations contained in Paragraph 189.

190. The Defendant denies the allegations contained in Paragraph 190.

COUNT IX

*State-Law Claim – Intentional Infliction of
Emotional Distress*

191. The Defendant reasserts his responses to paragraphs 1-190 as if specifically restated herein.
192. This paragraph of the Plaintiffs' Complaint contains legal conclusions to which no response is required. To the extent that facts are alleged, and a response is required, the Defendant denies the allegations.
193. The Defendant denies the allegations contained in Paragraph 193.

COUNT X

*State-Law Claim – Negligent Infliction of
Emotional Distress*

194. The Defendant reasserts his responses to paragraphs 1-193 as if specifically restated herein.
195. This paragraph of the Plaintiffs' Complaint contains legal conclusions to which no response is required. To the extent that facts are alleged, and a response is required, the Defendant denies the allegations.
196. The Defendant denies the allegations contained in Paragraph 196.
197. The Defendant denies the allegations contained in Paragraph 197.
198. The Defendant denies the allegations contained in Paragraph 198.

COUNT XII

State-Law Claim – Civil Conspiracy

199. The Defendant reasserts his responses to paragraphs 1-198 as if specifically restated herein.
200. This paragraph of the Plaintiffs' Complaint contains legal conclusions to which no response is required. To the extent that facts are alleged, and a response is required, the Defendant denies the allegations.
201. The Defendant denies the allegations contained in Paragraph 201.
202. The Defendant denies the allegations contained in Paragraph 202.
203. The Defendant denies the allegations contained in Paragraph 203.
204. The Defendant denies the allegations contained in Paragraph 204.

205. The Defendant denies the allegations contained in Paragraph 205.

206. The Defendant denies the allegations contained in Paragraph 206.

COUNT XIII

State-Law Claim – Respondeat Superior

207. The Defendant reasserts his responses to paragraphs 1-206 as if specifically restated herein.

208. This paragraph of the Plaintiffs' Complaint contains legal conclusions to which no response is required. To the extent that facts are alleged, and a response is required, the Defendant denies the allegations.

209. The Defendant denies the allegations contained in Paragraph 209.

210. The Defendant denies the allegations contained in Paragraph 210.

211. The Defendant denies the allegations contained in Paragraph 211.

212. The Defendant denies the allegations contained in Paragraph 212.

AFFIRMATIVE DEFENSES

Without admitting the allegations set forth in Plaintiff's Complaint, the Defendant hereby states the following by way of affirmative defense thereto:

FIRST AFFIRMATIVE DEFENSE

Defendant says that each Count of the Complaint fails to state a cause of action for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant says that Plaintiff has waived any rights it may have had against the Defendant.

THIRD AFFIRMATIVE DEFENSE

The individual Defendant is entitled to qualified immunity. The Defendant has qualified immunity from this suit as the alleged acts complained of occurred within the scope of the Defendant's official duties.

FOURTH AFFIRMATIVE DEFENSE

The Defendant was privileged in conduct and acts, and, therefore, the Plaintiffs cannot recover.

FIFTH AFFIRMATIVE DEFENSE

The Defendant was justified in all acts and/or conduct, and, therefore, the Plaintiff cannot recover.

SIXTH AFFIRMATIVE DEFENSE

The Defendant's acts and conduct were performed according to and protected by law and/or legal process, and, therefore, the Plaintiff cannot recover.

SEVENTH AFFIRMATIVE DEFENSE

Defendant says that the any alleged conduct or actions were not the proximate cause of Plaintiff's injuries.

EIGHTH AFFIRMATIVE DEFENSE

Defendant says that the Complaint fails to state a claim under 42 U.S.C. s. 1983 against him as the conduct alleged in the Complaint does not involve any particular right arising under the United States Constitution and further that no violation of any federal or constitutional right has been plead with the requisite particularity, and counts purporting to allege such violation must, therefore, be dismissed.

NINTH AFFIRMATIVE DEFENSE

Defendant gives notice that they intend to rely upon such other and further defenses as may become available or apparent during discovery proceedings in this case and reserve their rights to amend this Answer to assert any such defenses.

Respectfully submitted,
For the Defendant, David Coonan
By His Attorney,

/s/ Timothy M. Burke, Esq.
Timothy M. Burke, BBO #065720
LAW OFFICES OF TIMOTHY M. BURKE
160 Gould Street, Suite 100

Needham, MA 02494
(781) 455-0707

CERTIFICATE OF SERVICE

I hereby certify that this document filed through ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on May 21, 2019.

/s/ Timothy M. Burke